IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.170 of 2001.
Dated of Decision: December 29th, 2007.

State of H.P. …… Appellant.

Versus

Paramjit and others. ……. Respondents.

Coram

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the Appellant : Mr. S.D.Vasudeva, Addl. Advocate General.

For the Respondents : Mr. Jagdish Vats, Advocate.

Surinder Singh,J. (oral) :

The respondents were tried and acquitted of the offence punishable under Section 61(1)(a) of the Punjab Excise Act, as applicable to the State of Himachal Pradesh, read with Section 120-B of the Indian Penal Code.

Heard and gone through the record.

In brief, the prosecution case has been that on 2.9.1998 at about 3.00 P.M., Shamsher Singh, A.S.I. was on patrolling duty alongwith other police officials at Bhakra. During the patrolling, he found that respondent Paramjit had 238 bottles of Red Night Whisky in his Khokha, without permit. 144 bottles were packed in boxes, each containing 12 bottles and 98 bottles were lying in the open space. The Investigating Officer from 5 sealed boxes, took **5** samples of the liquor from

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Whether reporters of local papers may be allowed to see the judgment? Yes.

one bottle of each boxes, in separate **5** nips and one sample was taken from only one bottle from amongst 98 bottles. The 6 nips were sealed with seal impression `A' and remaining six bottles from which the samples were taken were also sealed with the same seal. The entire proceedings were conducted in the presence of Dhani Ram (PW2) and Jeet Ram (PW1), witnesses and case property was taken into possession in their presence vide memo Ex.PW1/A. The site plan Ex.PW8/B was also prepared and the Rukka Ex.PW8/A was sent for the registration of the case. No permission to stock the liquor at the said place was produced, therefore, Paramjit and the partners of M/s Rana & Company, who had licenced liquor Vends at Bhakra were made the accused. Accordingly, the challan was presented in the court, for their trial.

The respondents were charge-sheeted for the aforesaid offence. They pleaded not guilty ad claimed trial. At the end of the trial, they were acquitted and their acquittal has been assailed in this appeal.

At the very out-set, I would like to say that the independent witness Jeet Ram (PW-1) turned hostile and did not support the case of the prosecution. Even in his cross-examination by the learned Public Prosecutor with the permission of the Court, could not yield any result. According to him, he was informed by the police that the liquor-boxes were taken from the licenced-shop of the respondents. Another witness Dhani Ram (PW2) in his cross-examination has given different version that the aforesaid liquor was

recovered from a Khokha of Ram Swaroop, who is neither the accused in this case nor his link has been established with the respondents.

PW-3 Chaman Lal, an Assistant from the Excise Office has admitted in his cross-examination that there were two licenced English Vends L-14 and L-28 at Bhakra.

The Investigating Officer, ASI Jaram Singh (PW-8) has stated that no person was present inside the Khokha from where the liquor was recovered. According to him, he came to know from the witnesses that that aforesaid Khokha pertained to Paramjit, but he could not say as to which of the witness had stated so and no such witness was examined in the court below.

Site plan Ex.PW8/B at Point-D shows that Khokha of Paramjit, but the alleged liquor was recovered from another Khokha, which was at some distance at Point-B, whereas, according to the independent witness PW-2 Dhani Ram, the liquor was recovered from a temporary structure adjacent to a shop, which has a common wall and a common roof, but the site plan does not reflect this position. Thus, the evidence led by the prosecution does not establish any link with any of the respondents that the stored bottles of liquor in the khokha aforesaid were in his/their actual and conscious possession, which is sine quo non to hold them guilty and further there is no evidence of conspiracy.

In result, under the aforesaid suspicious circumstances, it cannot be held that the offences charged against the

respondents stand proved. The learned trial court has rightly recorded the findings of acquittal of the respondents on the strength of the above evidence. Accordingly, the appeal is dismissed.

The respondents are discharged of their bail bonds entered upon by them at any time during the proceedings of the case.

Send down the records.

December 29th, 2007. **(Surinder Singh)**
(Pds) **Judge.**